Statement by
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before the
Democratic Steering and Policy Committee
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Thank you for the opportunity to discuss the impending crisis involving failure to raise the debt limit. While we all hope there will be a timely resolution of this problem, given the intransigence of many Republicans on this issue, the possibility of default on the federal debt cannot be dismissed as unthinkable. Indeed, there are those within the Republican Party who genuinely hope for default, believing, insanely in my opinion, that somehow or other this will benefit the American people.

The Advocates of Default

First, I want to call this committee's attention to the sorts of things being said by the people that Republicans and their friends in the Tea Party movement look to for leadership on economic issues. Some of these people and the places where their writings appear are very obscure. But I assure you that they and their ideas have enormous influence among many members of the Republican Party and its allies.

Let me begin with James M. Buchanan, who is among the most esteemed conservative economists alive today; a winner of the Nobel Prize in economics in 1986. In 1987, he published an essay in which he argued that the national debt is so fundamentally immoral that default could not be considered to be morally unjustified. Said Buchanan, "On balance, the moral arguments against default on public debt do not seem so strong as seems to be assumed in the observed neglect of the question."[1]

In 1992, the late economist Murray Rothbard, who continues to exercise enormous influence among extreme libertarians, went further, arguing that the entire national debt should be repudiated. Writing in the right-wing journal *Chronicles*, he said that there is a fundamental difference between private debt and public debt. Repudiation of the former would be an immoral abrogation of contract, but not the latter because the money to repay the loan or the interest comes from taxation, which is essentially theft, Rothbard wrote. Moreover, since much of the national debt was contracted in the past for the benefit of people no longer living, there was no reason why the living should be bound by past commitments. Finally, Rothbard argued that American history supported the idea of repudiation. He cited favorably the experience after the Civil War when the Confederate states repudiated their debts.[2]

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[1] James M. Buchanan, "The Ethics of a Debt Default," in James M. Buchanan, Charles K. Rowley, and Robert D. Tollison, eds., *Deficits* (New York: Basil Blackwell, 1987), p. 372. For a contrary view, see Geoffrey Brennan and Giuseppe Eusepi, "The Dubious Ethics of Debt Default," *Public Finance Review*, vol. 30, no. 6 (November 2002), pp. 546-61.
[2] Murray N. Rothbard, "Repudiating the National Debt," *Chronicles* (June 1992), pp. 49-52.

Also in 1992, conservative financial analyst Christopher Whalen, who once worked for the Federal Reserve Bank of New York, told the *Washington Post* that debt default was no big deal because lots of countries have done it: "If it's good enough for Brazil and Mexico, why not us?" He proposed that the Treasury simply stop paying interest on the debt and have the Federal Reserve create enough new money to pay it off at face value. Massive inflation would result, but Whalen said it would be worth it.[3] In a recent column for Reuters, he said it would be no problem if the Treasury defaulted by paying its debts late. The principle was more important than the financial consequences, he said.[4]

In 1995, the Foundation for Economic Education in New York, a venerable free market organization, published an essay in its journal, *The Freeman*, advocating cancelation of the national debt. It argued that the primary benefit would be that no one would ever lend the government another dime, thus guaranteeing a balanced budget for all time.[5]

That same year, many of you will still recall the debt crisis that resulted when former Speaker Newt Gingrich held the debt limit hostage to Republicans demands for large cuts in Medicare. Speaking before the Public Securities Association, he responded to criticism that a debt default would impose an enormous cost on the government and society. Mr. Gingrich said, "I don't care what the price is."[6]

More recently, John Tamny of the Cato Institute wrote a column for *Forbes* magazine saying that we should all "learn to love the idea of a U.S. default." He said that concern for default was absurd. "For Americans to worry about a debt default is like the parent of a heroin addict fearing that his dealers will cease feeding his addiction," he wrote, oblivious the enormous hardship that would befall millions of Americans who put their savings into Treasury bonds in good faith.[7] Such callousness, however, is typical of the right wing Tea Party attitude on this issue.

Last year, conservative economist Gary North invoked Biblical principles to celebrate the debt default that he saw coming. He noted that Deuteronomy 15:1-2 says that every 7 years "every creditor shall release what he has lent to his neighbor."[8] Some of you may remember that television preacher Pat Robertson raised this idea, often called "Jubilee" among evangelicals, when he ran for the Republican presidential nomination in 1988.[9]

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[3] Kathleen Day, "With Debt Burgeoning, Could the U.S. Default?" *Washington Post* (June 14, 1992).
[4] Christopher Whalen, "Default, Debt Ceilings and Democracy," Reuters (April 18, 2011).
[5] Daniel J. Pilla, "Should We Cancel the National Debt?" *The Freeman* (November 1995).
[6] Quoted in David E. Sanger, "Gingrich Threatens U.S. Default If Clinton Won't Bend on Budget," *New York Times* (September 22, 1995).
[7] John Tamny, "Learn to Love a U.S. Default," *Forbes* (May 24, 2010).
[8] Gary North, "The Case for America's Future," LewRockwell.com (October 14, 2010). I should note that Gary and I worked together for Rep. Ron Paul back in 1976. Lew Rockwell, who published North's article on his web site, which is widely read by the radical right, later served as Dr. Paul's chief of staff. On North's influence among "the American far right," see Mark Oppenheimer, "'Christian Economics' Meets the Antiunion Movement," *New York Times* (April 29, 2011).
[9] "The Preachers and the Bully Pulpit," *New York Times* (March 8, 1988).

The point I am making is that there is a long tradition of advocacy for debt default and even repudiation among conservatives and Republicans. While once these might have been considered fringe views, it is clear that they are now mainstream among those in the Tea Party, who dominate Republican primaries and hold virtually every Republican in Congress hostage to its demands, no matter how ridiculous or extreme. For many, that means never raising the debt limit, ever, even if default results. That's a small step from repudiation of the debt.

Impact of Default on Financial Markets

I think the best sources of information on the likely consequences of default are those in financial markets who make their living trading Treasury securities and analyzing the impact on yields of various economic and political scenarios. They have been warning for some time that dire consequences would ensue in the event of a Treasury default because an essential quality of its securities has always been that there is assumed to be no risk of default.

In April, J.P. Morgan published an extensive analysis of the "domino effect" of a U.S. default that would spread far beyond those that own Treasury securities. As it explained:

> Our analysis suggests that any delay in making a coupon or principal payment by the Treasury – even for a very short period of time – would almost certainly have large systemic effects with long-term adverse consequences for Treasury finances and the U.S. economy. These effects would be transmitted through three primary channels: U.S. money funds, the repo market, and the foreign investor community, which holds nearly half of all Treasury securities. Our main conclusions are as follows:
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> - A technical default raises the risk of a flight to liquidity out of government money funds, potentially triggering an increase in redemptions similar to that seen in 2008.
> - Repo markets will be severely disrupted as haircuts are raised and could result in a significant deleveraging event.
> - Even if the technical default is cured immediately, foreign demand for Treasuries could be permanently impaired. As a case in point, we note that even without any kind of default, Fannie Mae and Freddie Mac's move into conservatorship has led to permanently lower foreign sponsorship of GSE debt.[10]

The report says that default could raise yields on Treasury securities significantly and that this impact could last for years owing to permanently reduced foreign demand. It notes that a situation similar to ours developed in Peru in 2000 in which the government chose

[10] "The Domino Effect of a U.S. Treasury Technical Default," U.S. Fixed Income Strategy, J.P. Morgan (April 19, 2011).

for political reasons not to make a debt payment that was due. Although the payment was later made and Peru's credit rating restored to its previous position, yields remained about 50 basis points higher for some time thereafter.

In this connection, I would call to the Committee's attention a little known incident from 1979 when the Treasury briefly defaulted. Owing partly to Congress's failure to raise the debt limit in a timely manner and some problems with Treasury's equipment for printing checks, some payments that were due on May 3 and May 10 were missed. By May 17, all payments had been made and the Treasury was current with all bondholders. Nevertheless, yields on Treasury bills rose 60 basis points and stayed higher for years.[11]

In a survey of its largest clients, J.P. Morgan found that they were expecting a 37 basis point rise in yields on the 10-year Treasury security in the event of a temporary default. However, because they are more risk-averse, foreign investors said they expect a larger yield increase of 55 basis points. Such an increase in yields would raise Treasury's annual borrowing costs $10 billion in the short run and $75 billion per year in the longer run as maturing debt turns over.

In a May 18 report to its clients, Morgan Stanley economists took issue the widely-held Republican view that Treasury can stop paying all the rest of its bills, including Social Security benefits, and simply prioritize payments to debt holders, thus preventing a default. The Morgan Stanley report said that this is a highly impractical solution to the problem. As it explained:

> Some have argued that the Treasury can manage its cash in a way that avoids default. For example, see the *Wall Street Journal* op-eds by Senator Pat Toomey and former Treasury official Emil Henry. However, the approach that they are advocating does not seem at all workable to us. The Treasury's cash flows are too lumpy to simply prioritize one form of spending over another. For example, we would expect a significant political outburst if the Treasury withheld monthly Social Security checks at the beginning of the month (even though there was sufficient cash on hand to make the payments) just in case they needed this cash to make debt service payments at mid-month. Such a scenario is highly impractical – and probably not even legal.[12]

Just yesterday, Reuters reported an increase in concern among those in financial markets over the prospect of default. As it said:

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[11] Terry L. Zivney and Richard D. Marcus, "The Day the United States Defaulted on Treasury Bills," *Financial Review*, vol. 24, no. 3 (August 1989), pp. 475-89.

[12] David Greenlaw and Ted Wieseman, "Debt Ceiling Showdown: An Update," Global Economic Forum, Morgan Stanley (May 17, 2011). The references are to Pat Toomey, "How to Freeze the Debt Ceiling Without Risking Default," *Wall Street Journal* (January 19, 2011); Emil W. Henry Jr., "The Debt Ceiling: Myths and Facts," *Wall Street Journal* (April 28, 2011).

> Standard and Poor's told Reuters last week it would waste no time cutting the top-notch U.S. credit rating if Treasury missed a $30 billion debt payment on August 4.
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> Robert Tipp, chief investment strategist at Prudential Fixed Income, with $240 billion in assets, said long-term interest rates could swiftly rise by up to 50 basis points.
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> Based on the projected budget deficit, that amounts to an extra $70 billion in interest costs -- a fairly hefty price to pay for a country already facing a large debt burden.
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> Robert Brusca, chief economist at Fact and Opinion Economics, reckons a default could be a lot more costly, knocking Treasury prices down 5 to 10 points in a day -- a violent and unusual move. "This could be a horror show."
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> The turmoil would likely spread far beyond the bond market as Treasuries are the one asset invariably accepted worldwide as collateral. A downgrade could result in margin calls, unleashing a wave of selling in stock and other markets.
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> In a note to clients this week, Priya Misra, head of U.S. rates research at BofA-Merrill Lynch, suggested owning some S&P 500 "puts" in case the debt ceiling is not raised by August 2.[13]

What Can Treasury Do?

I think those who believe the Treasury can easily avoid a default by prioritizing its payments – which it already has the authority to do under a 1985 General Accounting Office opinion – don't understand how variable its cash flow is.[14] Inflow almost never matches outflow on a daily or even monthly basis. And, as the Morgan Stanley report notes, it is simply not tenable for the Treasury to withhold Social Security payments to make interest payments that may not be due for weeks.[15]

Furthermore, as we move closer to the end of the fiscal year, which ends on September 30, the Treasury loses flexibility because the Congressional Budget and Impoundment Control Act of 1974 requires that all fiscal year appropriations be paid within that year unless rescinded. The president has no authority to withhold payments past the end of the fiscal year except in the case of multi-year appropriations for some capital projects. In

[13] Steven C. Johnson, "Worries on Debt Ceiling Bubble Beneath the Surface," Reuters (July 6, 2011).
[14] In an October 9, 1985 opinion, GAO said: "We are aware of no statute or other basis for concluding that Treasury is required to pay outstanding obligations in the order in which they are presented for payment unless it chooses to do so. Treasury is free to liquidate obligations in any order it finds will best serve the interests of the United States." Report No. B-138524.
[15] The curious should examine issues of the Daily Treasury Statement to see just how variable Treasury's tax receipts and payments are.

any case, delaying payments to those supplying goods and services to the federal government would cause great hardship and undoubtedly increase costs in the future.

Finally, on Social Security, I have heard it said that the payment of benefits is never a problem as long as there are sufficient assets in the Social Security trust fund to pay them. The problem is that the Treasury securities in the trust fund are not marketable. If the Treasury lacks the cash to redeem the securities itself there is no practical way of obtaining the cash to pay benefits in the event that the debt limit becomes severely binding. That is why back in 1996 Treasury insisted that Congress raise the debt limit sufficiently to cover Social Security benefits or benefits due on March 1 could not be paid. Of course, Congress did so.[16]

Getting back to the potential problems in financial markets, many Wall Street analysts emphasize the unknown factor. As financial relationships have become more complicated, the full implications of a severe shock to the system cannot be fully anticipated. As UBS Bank economists Maury Harris and Drew Matus recently explained:

> The main impact on markets would come from sharply reduced liquidity in the U.S. Treasury market, as financial firms' procedures and systems would be tested by the world's largest debt market being in default. Given the existing legal contracts, trading agreements, and trading systems with which firms operate, could U.S. Treasuries be held or purchased or used as collateral? The aftermath of the failure of Lehman Brothers should be a reminder that the financial system's "plumbing" matters. All the legal commitments and limitations in a complex financial system mean a shock from an event that is viewed as inconceivable – such as a U.S. Treasury default – can cause the system to stall. The impact of a U.S. Treasury default could make us nostalgic for the market conditions that existed immediately after the failure of Lehman Brothers.[17]

Voicing a similar opinion, Wells Fargo Bank economist Scott Anderson recently said of a default, "It would be an earth-shattering event. It's taken as given that U.S. Treasuries are a safe asset. Once you question that assumption, it shakes the foundations of global finance and the way it's been established over the last 50 years."[18]

Lastly, I'd like to leave this section with the thoughts of University of California, Berkeley, economist Barry Eichengreen, a world-renowned expert on the international monetary system. He warns that a debt default could lead to a run on the dollar if foreigners come to feel that the U.S. is being run by insane people. As he put it:

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[16] Congressional Research Service, "Reaching the Debt Limit: Background and Potential Effects on Government Operations," Report No. R41633 (June 3, 2011), p. 22.

[17] Maury Harris and Drew T. Matus, "What Happens if U.S. Defaults?" Real Clear Economics blog, *Wall Street Journal* (June 23, 2011).

[18] Quoted in William Alden, "Debt Ceiling Fight Could Strain Economy Even Before August, With Moody's Downgrade Possible," HuffPost Business (June 3, 2011).

> If there is a threat to the dollar, it stems not from monetary policy, but from the fiscal side. What is most likely to precipitate a dollar crash is evidence that U.S. budgets are not being made by responsible adults. A U.S. Congress engaged in political grandstanding might fail to raise the debt ceiling, triggering a technical default. Evidence that the inmates were running the asylum would almost certainly precipitate the wholesale liquidation of U.S. Treasury bonds by foreign investors.[19]

The Constitutional Option

Having established at least the potential for calamitous consequences in the event of a debt default, what options are there other than acceding to the demands of those willing to default on the debt in pursuit of their political agenda? The Treasury is already taking some, including suspending issuance of certain securities and investments in certain funds.[20] But these measures only put off the day of reckoning. At some point, absent congressional action, a moment is going to come when the Treasury literally has no cash to make a debt payment.

This prospect will create not only an economic crisis, but a constitutional one. That is because of a little-known section of the 14th Amendment, which says, "The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned."[21]

The leading authority on the Public Debt Clause is Prof. Michael Abramowicz of the George Washington University law school. In a 1997 law review article, he discussed the history and interpretation of it at length. Abramowicz's conclusion is that any government action "making uncertain whether or not a debt will be honored is unconstitutional."[22] As he explains:

> A debt does not become valid or invalid only at the moment payment is due. A debt's validity may be assessed at any time, and a debt is valid only if the law provides that it will be honored. Therefore, a requirement that the government not question a debt's validity does not kick in only once the time comes for the government to make a payment on the debt. Rather, the duty not to question is a continuous one. If as a result of government actions, a debt will not be paid absent future governmental action, that

[19] Barry Eichengreen, "How to Kill a Dollar," Project Syndicate (June 6, 2011).
[20] These measures were outlined in a letter to Congress from Treasury Secretary Geithner on April 4.
[21] On the history of this section of the Constitution, see Phanor J. Eder, "A Forgotten Section of the Fourteenth Amendment," *Cornell Law Quarterly*, vol. 19, no. 1 (December 1933), pp. 1-19; Jack Balkin, "The Legislative History of Section Four of the Fourteenth Amendment," Balkinization (June 30, 2011). It has been cited in only one Supreme Court case: *Perry v. United States*, 294 U.S. 330 at 354. The Court confirmed its general validity and that its application was not limited to debts incurred during the Civil War.
[22] Michael Abramowicz, "Beyond Balanced Budgets, Fourteenth Amendment Style," *Tulsa Law Review*, vol. 33, no. 2 (Winter 1997), p. 592.

> debt is effectively invalid. The high level of generality recognizes that instead of referring to payment of debts, the Clause bans government action at any time that affects the validity of debt instruments…. Moreover, there is no such thing as a valid debt that will nonetheless not be honored; a debt cannot be called "valid" if existing laws will cause default on it. So as soon as Congress passes a statute that will lead to default in the absence of a change of course, the debt is invalid (or at least of questionable validity) and Congress has violated the original meaning of the Public Debt Clause.[23]

To my mind, this means that the very existence of the debt limit is unconstitutional because it calls into question the validity of the debt. So would any other provision of law. That is a key reason why Congress created a permanent appropriation for interest payments at the same time that the 14th Amendment was debated. Previously, Congress had to pass annual appropriations for interest.

Abramowicz further argues that the Public Debt Clause would also preclude Treasury from not making other payments that it is obliged to make due to previous commitments. As he explains:

> Determining which government payments are discretionary and which are required under an originalist reading of the Public Debt Clause may be difficult in some instances, but some ordinary government expenditures fit squarely within the broad construction of the public debt defended above. For example, government civil-service pension payments and money owed to independent contractors represent unambiguous obligations that the government owes because of past agreements in which the debt-holders have already fulfilled their part of the bargains…. If the Public Debt Clause applies to obligations that the government requires individuals to purchase, a budget crisis might not relieve the government of its duty to issue Social Security checks, since it has promised to make payments from a trust fund accumulated through recipients' own contributions.
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> A failure by the government to make Social Security payments because of a train wreck would breach a statutorily established agreement that the government will provide beneficiaries means of subsistence in exchange for their earlier contributions.[24]

This view is consistent with that of the Treasury Department, which has argued that it is not possible to prioritize its payments solely to protect bondholders since other obligations also constitute a form of debt that must be paid. Failure to make such payments would constitute a de facto default. As Deputy Treasury Secretary Neal Wolin put it in a January statement:

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[23] Ibid., pp. 593-94.
[24] Ibid., p. 600.

> In his January 6, 2011 letter urging that Congress act to protect America's creditworthiness by increasing the statutory debt limit, Secretary Geithner made clear that any default on legal debt obligations of the U.S. would be unthinkable. In response, Members of Congress of both parties have indicated agreement that the United States must honor its obligations. However, Treasury disagrees with suggestions by some that Congress could somehow evade this responsibility by passing legislation to "prioritize" payments on the national debt above other legal obligations of the United States.
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> While well-intentioned, this idea is unworkable. It would not actually prevent default, since it would seek to protect only principal and interest payments, and not other legal obligations of the U.S., from non-payment. Adopting a policy that payments to investors should take precedence over other U.S. legal obligations would merely be default by another name, since the world would recognize it as a failure by the U.S. to stand behind its commitments. It would therefore bring about the same catastrophic economic consequences Secretary Geithner has warned against, including sharp rises in mortgage interest rates and other borrowing costs for families; reductions in the value of homes, 401(k)s and other retirement savings; and negative effects on the dollar and the safe haven status of Treasury bonds and other Treasury securities. Such a policy would also be unacceptable to American servicemen and women, retirees, and all other Americans, who would rightly reject the notion that their payment has been deemed a lower priority by their government. For these reasons, the Department of Treasury has always emphasized – regardless of which party has held the White House or either house of Congress – that the only way to prevent default and protect America's creditworthiness is to enact a timely increase in the debt limit.[25]

From this analysis, I conclude that should the debt limit become severely binding – threatening not just interest or principal repayments on the debt, but any other payment that could reasonably be construed as a debt – then the Treasury would be justified, as a matter of constitutional law, to disregard the debt limit and do what is necessary to raise the cash needed to avoid default on any of its obligations.

I am well aware that this is a radical proposal and that I am not even a lawyer, let alone a constitutional scholar. But I am not alone in coming to this conclusion. Garrett Epps, a professor of constitutional law at the University of Baltimore, and Thomas Geoghegan, a well-known Washington lawyer, have recently come to the same conclusion.[26]

Geoghegan adds an extremely important point to this discussion. It is not just a question of how to interpret an obscure provision of the Constitution; it is a matter of national

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[25] Neal Wolin, "Treasury: Proposals to 'Prioritize' Payments on U.S. Debt Not Workable; Would Not Prevent Default," Treasury Notes (January 21, 2011).

[26] Garrett Epps, "Our National Debt 'Shall Not Be Questioned,' the Constitution Says," *The Atlantic* (May 4, 2011); Thomas Geoghegan, "Dear GOP, Default is Unconstitutional," *Politico* (March 31, 2011).

security, an area where the president has always had a very strong hand and been permitted wide latitude. As Geoghegan put it, "Where the validity of the public debt is concerned, our national security is at stake."

This is a view quite consistent with the thinking of the Founding Fathers. In Federalist No. 30, Alexander Hamilton warned that failure to ensure the integrity of our national debt would severely threaten the nation's ability to defend itself. As he wrote:

> In the modern system of war, nations the most wealthy are obliged to have recourse to large loans…. But who would lend to a government that prefaced its overtures for borrowing by an act which demonstrated that no reliance could be placed on the steadiness of its measures for paying? The loans it might be able to procure would be as limited in their extent as burdensome in their conditions. They would be made upon the same principles that usurers commonly lend to bankrupt and fraudulent debtors, with a sparing hand and at enormous premiums.

This is why our national security officials have been warning for some time that the debt is a national security problem. Last year, Secretary of State Clinton had this to say:

> I think that our rising debt levels poses a national security threat, and it poses a national security threat in two ways. It undermines our capacity to act in our own interests and it does constrain us where constraint may be undesirable. And it also sends a message of weakness internationally. I mean, it is very troubling to me that we are losing the ability not only to chart our own destiny, but to have the leverage that comes from this enormously effective economic engine that has powered American values and interests over so many years.[27]

And just a few weeks ago, Admiral Mike Mullen, chairman of the Joint Chiefs of Staff, said that the national debt is "the single biggest threat to our national security."[28]

Their concerns are clearly justified because foreigners necessarily gain some measure of control over us and limit our options by virtue of their ownership of large quantities of Treasury securities. As of April 29, foreigners held $4.5 trillion of Treasury securities, 47 percent of the total debt held by the public. China alone holds at least $1.15 trillion.[29] Not surprisingly, Chinese officials have expressed great concern over a debt default, no matter how brief, saying publicly that it would lead to a fall in the dollar.[30]

Of course, if the administration takes my position and ignores the debt limit to prevent a default on constitutional and national security grounds, there are certainly those who

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[27] Hillary Rodham Clinton, "Remarks on United States Foreign Policy," Council on Foreign Relations (September 8, 2010).
[28] Mike Mullen, "Address to Government Executive Media Group," Joint Chiefs of Staff (April 28, 2011).
[29] Data downloaded at www.treasury.gov/resource-center/data-chart-center/tic/Pages/ticsec2.aspx#ussecs.
[30] Emily Kaiser, "China Warns U.S. Debt-Default Idea Is 'Playing with Fire,'" Reuters (June 8, 2011).

would claim that it has violated the law. However, Jonathan Zasloff, a professor of law at UCLA, raises an interesting question: who would have standing to enjoin the administration's action? The Justice Department would certainly not sue the president or the Treasury secretary under these circumstances, so who would? Prof. Zasloff thinks only the Congress as a whole would have standing. As he explains:

> If the administration takes the position that it must continue to borrow to comply with the Fourteenth Amendment, who would stop it? Put another way, who would have standing to sue? Taxpayers clearly would not. Individual members of Congress? No: the Supreme Court's 1997 decision in *Raines v. Byrd* would seem to foreclose that. Congress as a whole? Perhaps; but what would it require for Congress as a whole to bring the lawsuit? A joint resolution would be blocked by Senate Democrats. That leaves the House to bring the lawsuit, and one could easily argue that one house would not have standing any more than individual members of Congress would…. There is a pretty strong argument that if the Treasury just goes ahead and blows through the debt ceiling on constitutional grounds, the courts will rule that no one has standing to challenge them.[31]

He goes on to note that the trend in legal thinking among Republicans over the last decade has been to argue that the president has sweeping powers in the area of national security that may not be infringed by Congress or the courts. Thus, ironically, if a case involving the administration's violation of the debt limit were to reach the Supreme Court, Republican-appointed justices such as John Roberts and Samuel Alito could end up affirming its action on grounds that Democrats normally find objectionable.

Conclusion

Obviously, it would be highly undesirable to provoke a constitutional crisis over the debt limit and it should only be contemplated under the most dire circumstances, which I for one would certainly not wish to occur. Unfortunately, there may be no alternative. Any number of Republicans in Congress have said publicly that they will not vote to increase the debt limit under any circumstances, and some senators have said they will filibuster any increase passing the House.[32] Others have said they will not vote for a debt limit increase unless extremely unrealistic conditions are met, which means that they would likely join a filibuster.[33] Even if cloture is invoked, a filibuster could well delay a debt limit increase past the point where default would occur.

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[31] Jonathan Zasloff, "If the Debt Ceiling Is Unconstitutional, How Would Anyone Know?" The Reality-Based Community (May 19, 2011).

[32] Among senators who have said publicly that they will filibuster a debt limit increase are Mike Lee of Utah, Jim DeMint of South Carolina, and Rand Paul of Kentucky. See Alexander Bolton, "Conservative Senators Will Filibuster Vote to Increase Debt Limit," *The Hill* (March 30, 2011); Manu Raju, "Tea Partiers Eye Debt-Cap Filibuster," *Politico* (April 13, 2011).

[33] For example, see Marco Rubio, "Why I Won't Vote to Raise the Debt Limit," *Wall Street Journal* (March 30, 2011).

A debt default and a constitutional crisis are both unpalatable options, unthinkable under ordinary circumstances. But these are not ordinary circumstances. It is clear that one of our major parties is now gripped by a sort of insanity that compels it to act in a way that is extremely detrimental to the well-being of all Americans, themselves included. We know from history that when threatened by such dire political circumstances, presidents such as Abraham Lincoln and Franklin D. Roosevelt took actions that went well beyond generally accepted constitutional bounds. The verdict of history, however, is that they acted appropriately and are rightly considered among our nation's greatest presidents.

I would like to close with a quote from Ronald Reagan, whom many of those threatening default claim to revere. Said Reagan in a 1983 message to the Senate:

> This country now possesses the strongest credit in the world. The full consequences of a default – or even the serious prospect of default – by the United States are impossible to predict and awesome to contemplate. Denigration of the full faith and credit of the United States would have substantial effects on the domestic financial markets and on the value of the dollar in exchange markets. The Nation can ill afford to allow such a result.[34]

[34] Ronald Reagan to Howard Baker (November 16, 1983).